

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-244-E - ORDER NO. 1999-412
JUNE 11, 1999

IN RE: Newberry Electric Cooperative, Inc.,)	CEASE AND DESIST
)	ORDER AND ORDER
Complainant/Petitioner,)	ISSUING RULE TO
)	SHOW CAUSE
vs.)	
)	
City of Newberry,)	
)	
Defendant/Respondent.)	
)	

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This matter comes before the Public Service Commission of South Carolina (the Commission) on a Motion for Immediate Temporary Restraining Order, a verified Complaint and Petition, and a Supplemental verified Complaint and Petition filed by the Newberry Electric Cooperative, Inc. (the Coop.) against the City of Newberry (the City).

According to the original complaint, an important national company (Wal-Mart) (the Customer) intends to open and operate a Supercenter on a tract of land outside the municipal limits of the City of Newberry, and within the assigned territory of the Cooperative. (We would note that a municipal electric system serving outside the municipal limits falls into the definition of an "electrical utility," found in S.C. Code Ann. Section 58-27-10 (1976). Electrical utilities are regulated by this Commission.) The tract is also adjacent to the Coop.'s headquarters building and related facilities. The tract is owned by a third party, and is crossed by long standing and significant electrical

facilities of the Coop., which are in place and available to serve this Customer and other customers in the area.

Whereas the Coop. has made an electric service proposal to the Customer to address its energy needs, and the Coop. has requested that the City not attempt to provide electric service to this Customer, the City has attempted to do so, according to the verified complaints. Also, according to the original complaint, the electric rates and charges for electric service offered by the Coop. are lower than those proposed by the City. Nonetheless, the Customer was not able to accept electric service from the Coop. due to the withholding of non-electrical services by the City. The Customer was therefore forced to accept service from the City, according to the documents.

The original complaint goes on to allege that, because of the Territorial Assignment Act and the opinion of the South Carolina Supreme Court in City of Newberry v. Public Service Commission, 339 S.E. 2d 124 (1986, S.C.), the City should be prohibited from serving the Customer which is located in the Coop.'s territory. According to the City's proposal, which was attached to the original complaint, the city was offering rates for service to the Customer at 750 KW and above, among other rates. Under the provisions of the City of Newberry case, the Home Rule Act of 1975 repealed the right of municipal electric systems to provide electric service to a requesting customer at a facility expecting to operate with a load of 750 KW or greater located within the territory previously assigned by this Commission to an electric cooperative without the cooperative's agreement. Certainly, the Coop. does not agree in this instance with the provision of service by the City. Accordingly, it would appear to us from the original

complaint that any provision of electric service by the City to the Customer addressed herein would be in violation of the principles enunciated in the City of Newberry South Carolina Supreme Court case.

The Supplemental Complaint and Petition, which was served on the City, incorporates the allegations of the original Complaint and Petition. (We would note parenthetically that the Commission Staff requested a response to the Supplemental Complaint and Petition from counsel for the City, but that no response was filed with this Commission.) The Supplemental Complaint and Petition alleges that the City, on information and belief, is about to engage in construction or operation to provide electric service to the Customer located in the Coop.'s assigned territory without the consent of the Coop. and/or approval of the Commission and without having applied for or secured a Certificate of Public Convenience and Necessity in accordance with the laws of the State of South Carolina, including, but not limited to S.C. Code Ann. Section 58-27-1230 (1976). The Supplemental Complaint and Petition also alleges that the Coop. is entitled to an Order of this Commission requiring the City to cease and desist from construction or operation, or attempting to do so, in connection with the specific customer in question.

We note that S.C. Code Ann. Section 58-27-1270 (1976) states that whenever an electrical utility is engaged, or is about to engage in construction or operation without having secured a Certificate of Public Convenience and Necessity any electric cooperative may file a complaint with the Commission. Further, according to that statute, the Commission may, with or without notice, make its order requiring the party complained of to cease and desist from such construction or operation until the

Commission may, after hearing, make such order and prescribe such terms and conditions in harmony with the chapter as are just and reasonable.

Under the provisions of the verified complaints, we hold that the City is about to engage in construction and/or operation without having secured a Certificate of Public Convenience and Necessity. The City's proposed service to the Wal-Mart is therefore unlawful under Sections 58-27-1230 and 58-27-1270. We also believe that the City appears about to unreasonably interfere with the lawful service of the Coop. pursuant to the provisions of S.C. Code Ann. Section 58-27-1280 (Supp. 1998).

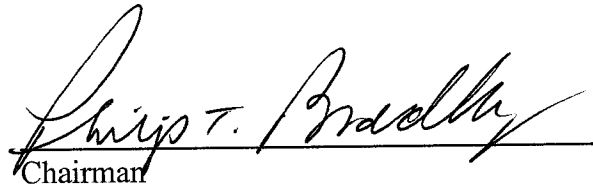
Accordingly, we therefore order that the City of Newberry shall cease and desist, and be prohibited from, attempting to provide electric service to the subject property (Wal-Mart supercenter location) in the assigned territory of the Newberry Electric Cooperative, Inc., pursuant to S.C. Code Ann. Section 58-27-1270 (1976). This cease and desist Order will remain in effect until a final hearing and/or further Order of this Commission. The original Complaint and Petition concludes with a request for a Rule to Show Cause.

Further, the City of Newberry shall appear at such time as may be set by the Commission to show cause why it should not have to obtain a Certificate of Public Convenience and Necessity to serve electricity to the described Wal-Mart supercenter location, and why it should not be permanently restrained from interfering with the lawful provision of electric service to that location by the Newberry Electric Cooperative, Inc.

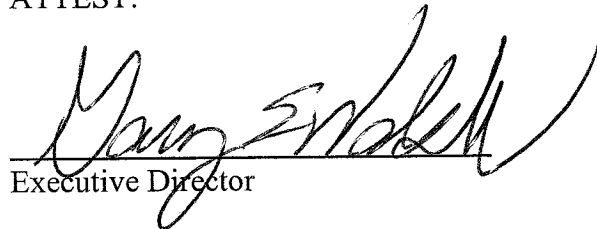
The original Motion for Immediate Temporary Restraining Order filed by the Coop. with the original Petition is denied, on the basis that this Commission has no jurisdiction to restrain the City from annexation of the premises involved.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)